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Attorneys for Defendants
COUNTY OF SAN MATEO and ROBERT FOUCRAULT,
individual and as Coroner, San Mateo County

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

1 The parties jointly submit this Case Management Conference Statement. Where the
2 parties have differing views as to a specific topic, the respective positions of the parties are
3 listed.

4 **1. Jurisdiction and Service.**

5 This Court has original subject matter jurisdiction over Plaintiff's claims as they arise
6 under 28 U.S.C. § 1441.

7 **2. Facts.**

8 Plaintiff's statement: Plaintiff Isolina Picon is the mother of Nicholas Picon who died of
9 intramural tunneling of the left anterior artery (heart attack) at the age of 23. Upon his
10 death the Coroner of the County of San Mateo took possession of the decedent's remains.
11 The defendant's claim that the entire heart organ was retained to permit further
12 investigation into the cause of death. Plaintiff contends that the autopsy was over and the
13 absence of toxicology tests played no role in the decision to retain the entire heart organ.
14 Plaintiff further alleges that the reason she was told the heart was retained was so that it
15 could be studied at Stanford University in order to permit scientific research. What is
16 undisputed however, is the fact that the plaintiff was *not* informed by the Coroner's
17 office of the County of San Mateo that the entire heart organ was not with the rest of the
18 remains of Nicholas Picon at the time of his burial.

19 Defendants' statement: Defendants do not agree it is undisputed that the plaintiff was
20 not told of the retention of the decedent's heart at or around the time of the burial of the
21 remains. In addition to the issues identified above, Defendants provide the following
22 general chronology:
23

10/25/06 – police report death of Nicholas Picon; Coroner's Office investigates

10/26/06 – Coroner's Office begins autopsy, removes samples for analysis; body returned to family pending outcome of investigation

10/29/06 – additional examination of the retained heart conducted by Coroner's
Office

11/13/06 – Plaintiff contacts Coroner’s Office with inquiry about retention of organs by Coroner’s Office

11/16/06 – San Mateo Coroner has further discussions with Plaintiff and states
decedent's heart would be returned to Plaintiff

11/20/06 – Coroner's Office has another discussion with Plaintiff; heart returned to Plaintiff in person by San Mateo Coroner

3. Legal issues.

Plaintiff's statement:

- a. Whether the plaintiff's was denied a recognizable "quasi-property right", when the Coroner of the County of San Mateo authorized the retention of the entire heart organ of her deceased son Nicholas Picon without obtaining her consent prior to his burial.
 - b. Whether the Coroner of the County of San Mateo breached the mandatory duties under Government Code § 815.6 by willfully violating California Government Code §§ 27491.4(a), 27491.45(a)(1), 27491.45(a)(2) and Health and Safety Code Sections 7150.1(g), 7150.2(c)(1) which would give rise to a valid claim for which relief may be granted.

- 1 c. Whether the actions of the Coroner of the County of San Mateo give rise to
2 liability under principles of negligence where a duty has been established and a
3 breach has been claimed giving rise to damages.
- 4 d. Whether the Coroner of the County of San Mateo unconstitutionality denied the
5 plaintiff Isolina Picon due process of law when making the unilateral decision to
6 retain the entire heart organ of Nicholas Picon without obtaining her consent, and
7 whether the actions of the Coroner were based on the belief that he was acting
8 under color of any statute at the time of the taking, which would give rise to a
9 constitutional claim under 28 U.S.C. § 1441; Specifically §1983 of Title 42.

10
11 Defendants' statement: Defendants agree that items a. through d. listed above are
12 disputed legal issues, including but not limited to whether any violation (if one occurred)
13 was willful and whether any duties as alleged were established. In addition, Defendants
14 are not yet able to address the full scope of legal issues relating to their defenses given
15 that Defendants still have a Rule 12(b)(6) challenge to the Amended Complaint pending
16 and no answer has yet been filed. Depending on the outcome of the Rule 12(b)(6)
17 motion, additional specific legal defenses may be applicable.

18
19 **4. Motions.**

20 Plaintiff's statement: Plaintiff anticipates filing a motion for summary judgment.

21 Defendants have a 12(b)(6) motion pending.

22 Defendants' statement: In addition to motions mentioned by Plaintiff, Defendants
23 believe a discovery motion relating to Plaintiff's amended initial disclosures may be
24 necessary if concerns about the content of the disclosure are not resolved. In addition,

1 depending on the outcome of the pending Rule 12(b)(6) motion challenging Plaintiff's
2 Amended Complaint, other motions may be necessary, including but not limited to
3 further Rule 12(b)(6) challenge to any amended complaint and a summary judgment
4 motion addressing any remaining causes of action.

5 **5. Amendment of Pleadings.**

6 Plaintiff's statement: Plaintiff anticipates adding additional defendants as discovery
7 progresses.

8 Defendants' statement: As no answer has yet been filed, it is premature to discuss
9 amendment of defenses. Defendants do not anticipate asserting any counterclaims.
10

11 **6. Evidence Preservation**

12 Defendant is taking and will continue to take all reasonable steps to preserve any
13 evidence relevant to the issues reasonably evident in this lawsuit. Plaintiff is presently
14 aware of no destruction programs that would apply in this case.

15 **7. Disclosures.**

16 Plaintiff's statement: Parties exchanged initial disclosures on April 24, 2008.

17 Defendants' statement: In light of issues raised by Defendants relating to the April 24
18 initial disclosure served by Plaintiff, Plaintiff agreed to amend her initial disclosure and
19 served a new version on May 7, 2008. Defendants still have concerns about the
20 Plaintiff's compliance with Rule 26(a)(1)(C) relating to computation of damages.
21

22 Defendants believe that the one-page description of damages provided by Plaintiff does
23 not satisfy the requirements of Rule 26(a)(1)(C), and Defendants also continue to request
24 production of documentation supporting any calculation of damages as required by that
25

rule. Defendants will continue their attempt to resolve these concerns informally in the hopes of avoiding a discovery motion.

8. Discovery Taken to Date.

Plaintiff's statement: Plaintiff served the Defendants with two items of discovery; interrogatories under Rule 33 and Plaintiff requested a production of documents under Rule 34. At this time issues remain regarding the Defendant's response to said requests. Plaintiff requests a departure from the discovery rules set forth in the Federal Rules of Civil Procedure and Civil Local Rules, including the 25-interrogatory limit under Rule 33 and the 10-deposition limit under Rule 30.

Defendants' statement: Defendants anticipate taking discovery into the scope of the Plaintiff's claimed damages, including but not limited to the medical expenses she claims to have already incurred. Defendants also anticipate taking the deposition of the Plaintiff before trial and to take discovery from any expert witnesses. Because Defendants do not yet know the scope of the claims that will survive their Rule 12(b)(6) motion, Defendants are unable to address any other scope of anticipated discovery other than to note that for now there does not seem to be a need to depart from the limits on discovery imposed by the Federal Rules. Defendants believe any departure can be addressed with the Court as the need arrives. The Rule 26(f) discovery plan is being submitted to the Court with this Case Management Conference Statement.

9. Class Action.

Plaintiff's statement: Unknown at this time.

Defendants' statement: This is not a class action.

1 **10. Related Cases.**

2 There are no related cases currently pending under the definition provided in Civil Local
3 Rule 3-12(a).

4 **11. Relief.**

5 Plaintiff's statement: Plaintiff seeks hospital, medical, and other health care expenses;
6 general and none economic punitive damages of at least \$10,000,000; costs of suit;
7 interest, and any other remedy available and appropriate.

8 Defendants' statement: Defendants do not agree that the statement of damages above or
9 the statement of damages served by Plaintiff with the Summons adequately describe "the
10 bases on which damages are calculated" as required by item 11 of the Standing Order For
11 All Judges Of The Northern District Of California: Contents Of Joint Case Management
12 Statement. Defendants will continue their effort to obtain information about the bases of
13 Plaintiff's claimed damages, but at present Defendants lack any information about the
14 specific basis for any of Plaintiff's claims of damages and are therefore unable to
15 describe any bases on which they content damages should be calculated if liability is
16 established. In addition, until there is a ruling on the pending Rule 12(b)(6) motion,
17 Defendants are unable to determine which causes of action might lead to liability so as to
18 permit them to make the requested statement of calculation of damages. Defendants will
19 provide the requested information as soon as these two issues are resolved.

20 **12. Settlement and ADR.**

21 The parties have not participated in any settlement discussions, but have agreed to
22 Mediation, which is to be conducted by Daniel Bowling prior to August 8, 2008.

1 **13. Consent to Magistrate Judge.**

2 Defendants did not consent to Magistrate Judge.

3 **14. Other References.**

4 None at this time.

5 **15. Narrowing of Issues.**

6 None at this time.

7 **16. Expedited Schedule.**

8 The parties do not believe an expedited schedule is appropriate for this case.

9 **17. Scheduling.**

10 Plaintiff's statement:

11 Proposed fact discovery cutoff: 10/06/08

12 Proposed cutoff for initial expert reports: 10/06/08

13 Proposed expert discovery cutoff: 10/06/08

14 Proposed dispositive motion hearing cutoff: 10/06/08

15 Proposed pretrial conference date: 12/08/08

16 Proposed trial date: 01/12/09

17 Defendants' statement:

18 Defendants believe any determination of scheduling should be based upon the date of
19 answer after all Rule 12(b) issues have been resolved, including any arising from any
20 subsequent amendment of Plaintiff's Amended Answer based on the outcome of the
21 pending motion. This assertion is made on the basis that the full scope of discovery is
22
23

1 not yet known and will not be determined until the pleadings are closed. Once the
2 pleadings are closed, Defendants believe the following to be an appropriate schedule:

3 **Fact discovery cutoff:** 6-8 months after answer

4 **Deadline for initial expert reports:** discovery cutoff plus 1-2 months

5 **Expert discovery cutoff:** initial expert report deadline plus 1-2 months

6 **Deadline for filing dispositive motions:** discovery cutoff plus 1-2 months

7 **Deadline for hearing dispositive motions:** 35 days after filing motion per Local
8 Rule 7-2

9 **Pretrial conference:** 2-4 weeks after expert discovery cutoff

10 **Trial date:** 4-6 weeks after expert discovery cutoff

11 **18. Trial.**

12 **Plaintiff's statement:** The trial is expected to last 7-13 days.

13 **Defendants' statement:** Without knowing the scope of Plaintiff's claims pending
14 resolution of the Rule 12(b)(6) motion, Defendants are unable to estimate the length of
15 the trial. At present, Defendants do not believe it will take longer than Plaintiff's
16 estimation of 7-13 days.

17 **19. Disclosure of Non-Part Interested Entities or Persons.**

18 None known by the parties at this time. As a governmental agency, Defendant County of
19 San Mateo is exempt from the disclosure requirement.

20 **20. Other matters.**

21 **Plaintiff's statement:** None at this time.

MAY-30-2008 15:20

SMC COUNTY COUNSEL

650 363 4034

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1 Defendants' statement: Plaintiff has proposed that this Case Management Conference
2 Statement be used as a Case Management Order. Defendants do not believe that this
3 statement is suitable for serving as a Case Management Order, and Defendants
4 respectfully submit that a case management order can be drafted based on the outcome of
5 the Case Management Conference.

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Dated: May 30, 2008

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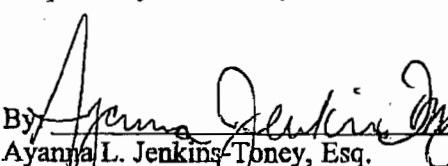
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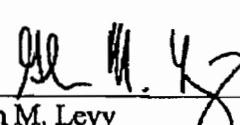
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Respectfully Submitted,

By: 
Ayanna L. Jenkins-Toney, Esq.
Attorney for Plaintiff
Isolina Picon

By: 
Glenn M. Levy
Attorney for Defendants
County of San Mateo and
Robert Foucrault

Case No. 08-0766-SC
JOINT CASE MANAGEMENT STATEMENT

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Attorneys for Defendants
COUNTY OF SAN MATEO and ROBERT FOUCRAULT,
individual and as Coroner, San Mateo County

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

ISOLINA PICON,) Case No.: C-08-0766-SC
Plaintiff,)
vs.)
COUNTY OF SAN MATEO, ROBERT)
FOUCRAULT, individually and as Coroner,)
San Mateo County)
Defendants.)
) **JOINT RULE 26(F) REPORT
OUTLINING THE DISCOVERY PLAN**

1 The parties hereby submit the following report pursuant to Rule 26(f) of the Federal
2 Rules of Civil Procedure. Where the parties have differing views as to a specific topic, the
3 respective positions of the parties are listed.
4

5 **Rule 26(f)(3)(A):**

6 There should be no change made in the timing, form or requirement for disclosure under
7 Rule 26(a). Initial disclosures were made on April 24, 2008.
8

9 **Rule 26(f)(3)(B):**

10 Plaintiff's statement: The subject of discovery is broad and encompasses all facts,
11 actions and occurrences related to the handling and disposal of the heart of the son of plaintiff
12 commencing at the moment of his death through the date of response to the discovery requests.
13 When the discovery is completed depends on Defendants and whether Defendants will
14 voluntarily and completely comply with the outstanding discovery requests. Plaintiff sees no
15 reason for any limitation on the discovery. The discovery will be conducted in stages. After the
16 Interrogatories and Documents requests are fully responded to, Request for Admissions and
17 further interrogatories and document request will be propounded followed by the appropriate
18 depositions.
19

20 Defendants' statement: Defendants do not believe discovery needs to be conducted in
21 stages. Discovery should be limited to the scope of issues relating to the investigation of the
22 cause of death of Nicholas Picon and should not cover the time period prior to his death. In
23 addition, discovery will be needed as outlined in the Joint Case Management Conference
24

1 Statement, including into the bases for the calculations of Plaintiff's claimed damages.
2 Defendants anticipate discovery will be completed on the timeline provided in the Joint Case
3 Management Conference Statement.

4

5 **Rule 26(f)(3)(C):**

6 Plaintiff's statement: *At this time Plaintiff foresees many issues about disclosure or*
7 *discovery of electronically stored information due to the copies that were provided during initial*
8 *disclosure which did not contain the original signatures of the alleged authors. At this time*
9 *Plaintiff request that the original documents should be produced for copying.*

10

11 Defendants' statement:

12 Defendants believe Plaintiff's statement in this regard does not deal with electronic
13 documents, which is the subject of Rule 26(f)(3)(C). If necessary, Defendants will provide
14 access to original documents at a mutually agreed-upon time and location at the Plaintiff's
15 expense given that Defendants have already produced copies of the relevant documents and also
16 agree to provide additional copies of documents that Plaintiff claims are difficult to read.

17

18

19 **Rule 26(f)(3)(D):**

20 Plaintiff's statement: At this time Plaintiff does not foresee any issues regarding any
21 claims of privilege or production.

22

23 Defendants' statement:

24 Defendants request that the parties agree upon a procedure for the exchange of privilege
25 logs.

1 **Rule 26(f)(3)(E):**

2 Plaintiff's statement: There should be no changes made in the limitations on discovery at
3 this time. This may changed if defendant is less than candid and forthright in the discovery
4 responses.

5 Defendants' statement: Defendants agree no changes on the limitations on discovery are
6 needed at this time. To the extent that Plaintiff seeks information about her son's medical
7 history prior to the date of his death in the possession of the County of San Mateo, Defendants
8 ask the Court to address how any such information is relevant to this action before Plaintiff be
9 permitted to conduct discovery into an area that is not related to the causes of action at issue in
10 this case.

12

13 **Rule 26(f)(3)(F):**

14 Plaintiff's statement: At this time Plaintiff does not foresee any other orders that the
15 court should issue under Rule 26(c) or Rule 16(b) and (c).

16 Defendants' statement: Defendants believe the Court should address whether Plaintiff
17 wishes to have a protective order in place relating to the filing of any documents that contain
18 sensitive information about the circumstances of her son's death.

19 Defendants also believe the date for joining additional parties and amending the
20 pleadings should be set two months before the close of fact discovery.

22 ///

23 ///

24 ///

26 Case No. 08-0766-SC

27 **JOINT RULE 26(F) REPORT OUTLINING DISCOVERY PLAN**

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SMC COUNTY COUNSEL

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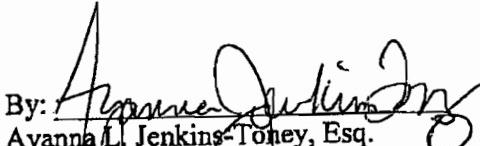
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Respectfully Submitted,

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Dated: May 30, 2008

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By: 
Ayanna L. Jenkins-Toney, Esq.
Attorney for Plaintiff
Isolina Picon

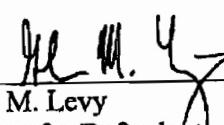
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Dated: May 30, 2008

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By: 
Glenn M. Levy
Attorney for Defendants
County of San Mateo and
Robert Foucrault

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Case No. 08-0766-SC
JOINT RULE 26(F) REPORT OUTLINING DISCOVERY PLAN

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